

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPLICATION OF CMTA, INC. FOR AN ORDER)	
DECLARING THE PROVISIONS OF KRS 278.010(3))	
AND KRS 278.495 INAPPLICABLE TO PROJECT)	CASE NO.
PERFORMED BY CTMA, INC. FOR THE)	2018-00180
KENTUCKY FINANCE & ADMINISTRATION CABINET)	

ORDER

On June 4, 2018, CMTA, Inc. (CMTA), filed a verified application pursuant to 807 KAR 5:001, Section 19, for an expedited Order declaring that the provisions of KRS 278.010(3) and KRS 278.495 are inapplicable to the project (Project) being performed by CMTA for the Kentucky Finance and Administration Cabinet (Finance Cabinet).¹ Specifically, CMTA seeks a declaration that the proposed Project will not create a utility as defined under KRS 278.010(3), nor will it create a master meter system as defined in KRS 278.495 and 49 C.F.R. Section 191.3; thereby the Finance Cabinet would not be subject to the Commission’s jurisdiction.²

On August 3, 2018, the Commission issued an Interim Order declaring that the Finance Cabinet would not, as a result of the proposed Project, be considered a utility subject to the Commission’s jurisdiction pursuant to KRS 278.040 because the Finance Cabinet would not be furnishing natural gas “to or for the public” within the meaning of

¹ CMTA Application (Application), at 1.

² *Id.*

KRS 278.010(3).³ However, the Commission was unable to render a decision on an expedited basis as to whether the proposed Project would create a master meter system pursuant to KRS 278.495 and 49 C.F.R. Section 191.3, which would subject the proposed Project to the Commission's pipeline safety jurisdiction.⁴ Therefore, the Commission determined that additional proceedings were necessary in order to develop the evidentiary record further.⁵

Commission Staff issued its First Request for Information (Staff's First Request) to CMTA on August 20, 2018. CMTA filed both its response to Staff's First Request and a Motion to Amend Application (Motion to Amend) on August 31, 2018. In the Motion to Amend, CMTA requests to amend its Application to add the Kentucky History Center to the proposed Project.

BACKGROUND

CMTA is a Kentucky corporation engaged in the business of providing engineering services, and the Finance Cabinet is an administrative agency of the Executive Branch of the Kentucky State Government and a political subdivision of the Commonwealth of Kentucky.⁶ CMTA and the Finance Cabinet entered into an agreement on or about September 14, 2017, setting forth the terms of the proposed Project.⁷ As the Project

³ Interim Order (Ky. PSC Aug. 3, 2019) at 4.

⁴ *Id.* at 5–6.

⁵ *Id.* at 6.

⁶ Application at 1–2.

⁷ *Id.* at 2.

manager, CMTA filed the pending declaratory action because it is responsible for assuring that the Project complies with all regulatory obligations.⁸

Currently, the Finance Cabinet has a system in place in which it has chillers and boilers located in a Central Utility Plant (CUP), which distributes high-temperature hot water and chilled water through underground pipes to serve three different buildings: the Kentucky State Office Building, the Kentucky State Office Building Annex, and the Transportation Cabinet (which CMTA refers to as the Finance's campus) located in downtown Frankfort, Kentucky.⁹ The Finance Cabinet owns the buildings and leases the offices to administrative agencies of the Kentucky State Government.¹⁰ CMTA asserts that the Finance Cabinet is not presently under the jurisdiction of the Commission.¹¹

Currently, the Finance Cabinet's campus has a natural gas meter in which natural gas is used to heat the water, and then the water is pumped through a water piping system to the other buildings to provide heating for the Heating, Ventilating, and Air Conditioning (HVAC) systems.¹² CMTA contends that as part of a boiler plant decentralization Project, the water piping system will be replaced with a natural gas piping system that will pipe natural gas from the same meter connection point through the new natural gas pipes to new high-efficiency boilers that will be installed at the other buildings on the Finance

⁸ *Id.* A letter from the Finance Cabinet authorizing CMTA as Project manager to file the pending declaratory action is attached as Exhibit 1 to the Application.

⁹ Application, Exhibit A.

¹⁰ *Id.* at 3.

¹¹ *Id.* at 2.

¹² *Id.*

Cabinet's campus.¹³ The Finance Cabinet plans to abandon the existing water piping system in place.¹⁴ CMTA states that the current system heats water to 300 degrees Fahrenheit and has a pressure of 125 psi; whereas, the new natural gas piping system will consist of 4" polyethylene pipe and will operate at a pressure of 10 psig on the pipes going to each building on the Finance Cabinet's campus.¹⁵

CMTA argues that even though natural gas meters will be installed to replace the hot water meters that currently meter the hot water energy consumed by each of the Finance Cabinet's campus buildings, the purpose of the meters will not be to measure the natural gas used at each building for revenue purposes, but rather it will be used to monitor each building's energy consumption as required by the Commonwealth Energy Management and Control System.¹⁶ CMTA further states that the natural gas meters are required to be installed to comply with requirements of the Division for Air Quality, as well as associated boiler plant air permits.¹⁷ Moreover, CMTA asserts that there is also an existing, separately metered, natural gas meter located at the Transportation Cabinet, and that meter will remain in service and the Finance Cabinet will continue to purchase natural gas from Columbia Gas of Kentucky (Columbia Gas).¹⁸

¹³ *Id.* at 2–3.

¹⁴ *Id.* at 3.

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

In the Application, CMTA asserts that the Finance Cabinet's lease amount for each building space is based exclusively upon the square footage of the building, and does not factor in the usage of utilities.¹⁹ Conversely, in CMTA's response to Staff's First Request, Item 10, CMTA admitted that the Finance Cabinet's lease amount for each of the above-referenced buildings is comprised of an office rental rate and an office utility rate.²⁰ Therefore, a portion of the Finance Cabinet's lease amount does factor in a flat fee for utility expense per square foot of the building.

CMTA further states that because the Project will only change the heating delivery method to each building with the purpose of saving energy, the Finance Cabinet will not collect rental amounts from the lessees that differ from those collected for the current boiler water piping system.²¹ Finally, CMTA confirms in the Application that only buildings owned by the Finance Cabinet, as indicated on the map designated as Exhibit A to the Application, will receive natural gas from the main gas meter located at the CUP, and that the entire Project will be constructed on property owned by the Finance Cabinet.²² At the completion of the Project, the Finance Cabinet will own and maintain the natural gas piping system that CMTA installs, and CMTA will take the necessary steps to safely abandon the current water piping system in place.²³

¹⁹ *Id.* at 4.

²⁰ Response to Staff's First Request, Item 10.

²¹ Application at 4.

²² *Id.*

²³ *Id.*

CMTA did not initially specify in its Application whether the buildings' tenants or the Finance Cabinet would own and operate the new high-efficiency boilers to be served by the new piping system. However, in CMTA's response to Staff's First Request, Item 8, it clarified that the Finance Cabinet will own and operate the new boilers and that no other appliances will be connected to the piping system.²⁴ The Finance Cabinet's boilers will be used for the sole purpose of providing heating hot water to the buildings' HVAC systems.²⁵

In the Motion to Amend, CMTA asserts that after filing the initial Application the Finance Cabinet identified an additional building, the Kentucky History Center, to include in the proposed Project.²⁶ CMTA included a map and drawings of the updated proposed Project as Exhibit 1 to the Motion to Amend. The Finance Cabinet owns the Kentucky History Center; however, unlike the rest of the buildings in the proposed Project, the CUP does not currently serve the Kentucky History Center because the building already has its own chillers and boilers for heating and cooling purposes.²⁷ CMTA states that these existing systems will remain unchanged as part of the Project.²⁸ According to CMTA, Columbia Gas currently provides natural gas service to these boilers through a separately metered, existing service line.²⁹ CMTA states that the boilers are the only equipment in

²⁴ Response to Staff's First Request, Item 8.

²⁵ *Id.*

²⁶ Motion to Amend at 1.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 1–2.

the Kentucky History Center served by the existing service line and, as part of the Project, the existing meter will be removed and the boilers connected to the new piping system.³⁰

In the Motion to Amend, CMTA proposes for the natural gas piping Project to extend to the Kentucky History Center because of the proximity to the buildings included in the original scope; the natural gas piping and heating system will match the system architecture of the buildings associated with the main project; and by providing natural gas from the CUP natural gas meter, the state will realize approximately \$40,000 annually in utility rate savings.³¹ CMTA asserts that the existing boilers in the Kentucky History Center will continue to be owned and operated by the Finance Cabinet, for the sole purpose of providing heating hot water to the HVAC systems, while domestic hot water will continue to be provided via existing electric hot water heaters.³²

DISCUSSION AND FINDINGS

Pursuant to KRS 278.040(2), the Commission has exclusive jurisdiction over the regulation of rates and services of all utilities in the state. KRS 278.010(3) defines a utility as “any person except . . . a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . (b) [t]he production, manufacture, storage, distribution, sale, or furnishing of natural or manufactured gas, or a mixture of same, to or for the public, for compensation, for light, heat, power, or other uses.”³³

³⁰ *Id.* at 2 and Exhibit 1.

³¹ *Id.* at 2.

³² *Id.*

³³ KRS 278.010(3)(b).

In its interim ruling in this matter, the Commission found that the Finance Cabinet would not be subject to regulation as a utility as a result of the proposed Project because the furnishing of gas by the Finance Cabinet only to its tenants would not constitute the distribution of gas “to or for the public.” The ruling was not based on CMTA’s assertion in its Application that the Finance Cabinet would not charge its tenants for natural gas service, either directly or through a utility usage component in the rent. Rather, it was based on the fact that the Cabinet’s provision of gas service would be limited to a specific class of persons.³⁴ Consequently, CMTA’s disclosure in discovery that the lease amount for the buildings does include a flat utility charge as a component does not change the Commission’s analysis in the Interim Order.

Additionally, based on information provided by CMTA in discovery, the Commission has determined the Finance Cabinet will not distribute natural gas to its tenants through the new piping system. Rather, as discussed in more depth later in this Order, the Finance Cabinet itself will be the consumer of the natural gas delivered through the new piping system. Specifically, the Finance Cabinet will use the new natural gas service to operate high-efficiency boilers to provide heating hot water to the buildings’ HVAC systems.

The only tenant appliances in the buildings included in the Project that burn natural gas are the kitchen appliances in the Transportation Cabinet building that are served by the existing, separately metered line. For the reasons stated in the Interim Order, such provision of natural gas service by a landlord to a tenant is not considered service to or

³⁴ Interim Order at 5.

for the public. Consequently, the Finance Cabinet's furnishing of natural gas service through the existing line to the Transportation Cabinet building is not a utility service subject to the Commission's jurisdiction under KRS 278.040(2)³⁵ notwithstanding the inclusion of a utility component in the lease amount.

CMTA further requests the Commission to make a determination as to whether the proposed Project, with the amendment, would create a master meter system pursuant to KRS 278.495 and 49 C.F.R Section 191.3. If the proposed Project were to create a master meter system then the Commission would have the authority to regulate safety aspects of the natural gas facilities.³⁶

KRS 278.495(2) authorizes the Commission to regulate the safety of natural gas facilities of utilities, municipalities and master meter systems. "Master meter system" is defined by KRS 278.495(1)(b) as:

a pipeline system for distributing gas within a definable area, such as, but not limited to, a mobile home park, housing project or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution pipeline system supplies the ultimate consumer, who either purchases the gas directly through a meter or by other means, such as through rents.

³⁵ Case No. 2016-00305, *In the Matter of: Elec. Application of Kentucky Manufactured Hous. Inst. for A Declaratory Order* (filed Mar. 10, 2017) at 3; Case No. 1996-00448, *An Investigation of the Rates, Charges, Billing Practices and Provision of Utility Service by Envirotech Utility Management Services* (filed Apr. 29, 1997) at 5-7.

³⁶ KRS 278.495(2)(b).

This definition is substantively identical to the definition of “master meter” in federal pipeline safety regulations.³⁷

According to maps of the Project submitted by CMTA, the distribution piping proposed to be installed as part of the project will be downstream from an existing meter located on Regan Street in downtown Frankfort.³⁸ The existing meter through which natural gas is now supplied to the kitchen in the Transportation Cabinet building is located on Mero Street.³⁹ Because the piping systems downstream from these meters are not connected, the Commission will consider the jurisdictional status of each system independently of one another.

Regan Street Meter

According to CMTA, the proposed new piping system downstream from the Regan Street meter will deliver natural gas to new natural gas boilers at four state office buildings.⁴⁰ The Finance Cabinet will own and operate the new boilers for the sole purpose of providing hot water to the buildings’ HVAC systems. No appliances in the buildings, other than the new gas boilers, will be served by the proposed new piping.

³⁷ 49 C.F.R. Section 191.3 defines “master meter system” as:

[A] pipeline system for distributing gas within, but not limited to, a definable area, such as a mobile home park, housing project or apartment complex, where the operator purchases metered gas from an outside source for resale through a gas distribution pipeline system. The gas distribution system supplies the ultimate consumer who either purchases the gas directly through a meter or by other means, such as by rents.

³⁸ Application, at Exhibit A; Response to Staff’s First Request, Item 7.

³⁹ *Id.*

⁴⁰ Application, at 2–3.

The Commission is not aware of any prior proceeding in which it has had occasion to interpret the statutory definition of “master meter.” The Commission notes, however, that the United States Pipeline and Hazardous Materials Safety Administration (PHMSA), the federal agency that enforces minimum pipeline safety standards at the federal level, has issued several interpretation letters applying the definition of “master meter” as set forth in 49 C.F.R. Section 191.3 to facts similar to those presented by the proposed Finance Cabinet project. Insofar as the Commission is charged under KRS 278.495 with enforcing federal pipeline safety regulations, the Commission finds it appropriate to consider what the federal agency that promulgates and enforces the standards considers to be a “master meter system.”⁴¹

Most recently, PHMSA issued an interpretation letter in response to a request from Northern Arizona University (NAU) on the jurisdictional status of an underground piping system on the university’s campus.⁴² According to NAU, it purchases natural gas through four meters and distributes the gas through a piping system to campus buildings. NAU leases space in some of the buildings served by the piping system to outside organizations, including some tenants, such as food service providers, that consume natural gas. NAU charges these tenants for natural gas consumption through meters or rents. PHMSA concluded that NAU’s pipeline system was a master meter system because it distributed natural gas purchased by the university to tenants that consume and pay NAU for the natural gas.

⁴¹ Louisville Gas and Electric Co. Alleged Failure to Comply with KRS 278.495, 807 KAR 5:022, and 49 C.F.R. Part 192, Case No. 2017-00119, at 20-21 (Ky. PSC March 16, 2018).

⁴² Northern Arizona University Interpretation, PI-17-0012 (Nov. 6, 2017).

In considering the jurisdictional status of NAU's campus pipeline system, PHMSA referenced a previous interpretation letter, PI-03-0101, in which it considered the jurisdictional status of a campus pipeline system operated by Bryant College in Rhode Island.⁴³ PHMSA concluded that Bryant College's system was not a master meter system because Bryant College was only "using gas delivered through its pipeline system to provide heat and hot water to campus buildings." PHMSA noted, however, "if the Bryant College gas system provides gas to consumers, such as concessionaires, tenants, or others, it is engaged in the distribution of gas, and the persons to whom it is providing gas would be considered the customers even though they may not be individually metered. The Bryant College pipeline system would then be a Master Meter System."⁴⁴

In PI-74-0106, PHMSA addressed the jurisdictional status of a pipeline system in an apartment complex that delivers natural gas to multiple buildings in the complex. PHMSA stated that "if the landlord buys gas and, in turn, resells it to tenants for their consumption, the underground exterior lines used to transport the gas to tenants are a distribution system subject to the Federal standards." Nonetheless, PHMSA stated that if the landlord uses the natural gas delivered through the pipes "to provide centrally located heat or air conditioning for all tenants in the building, the landlord is the consumer and not an operator" of a jurisdictional distribution system.

⁴³ Bryant College Interpretation, PI-03-0101 (Feb. 14, 2003).

⁴⁴ Similarly, in PI-73-030, PHMSA stated:

if the college owned gas system consumes the gas and provides another type of service such as heat or air conditioning, to the individual buildings, then the college is not engaged in the distribution of gas. In this instance the college would be the ultimate consumer, and the Federal pipeline safety standards would only apply to mains and service lines upstream of the meter.

The Commission finds the reasoning of these PHMSA interpretation letters persuasive. Therefore, the Commission concludes that the piping system downstream from the Regan Street meter will not be a master meter system if all of the natural gas delivered through the piping system is consumed by the Finance Cabinet's boilers to provide hot water for the heating systems in the buildings. In this case, the Finance Cabinet will be the ultimate consumer of the natural gas metered at Regan Street and will not be considered an operator of a master meter system subject to federal pipeline safety standards.

Although the proposed pipeline facilities downstream from the Regan Street Meter, as described, will not be subject to the Commission's pipeline safety jurisdiction, the Commission strongly encourages the Finance Cabinet to implement the safety measures outlined in CMTA's response to Staff's First Request, Item 2. Specifically, the Commission encourages the Finance Cabinet to develop and follow a manual of written procedures for conducting operations and maintenance activities, and for emergency response. This manual, at a minimum, should provide procedures for:

1. Leakage surveys per 49 CFR Section 192.723.
2. Monitoring of external corrosion control per 49 CFR Section 192.465.
3. Periodic "sniff tests" per 49 CFR Section 192.625.
4. Pipeline patrols per 49 CFR Section 192.721.
5. Critical valve monitoring and repair per 49 CFR Section 192.747.

Mero Street Meter

According to CMTA, the existing Mero Street meter is located adjacent to the Transportation Cabinet building.⁴⁵ The line downstream from the meter enters the Transportation Cabinet building and provides natural gas only to cooking appliances in

⁴⁵ Response to Staff's First Request, Item 7.

the building's kitchen.⁴⁶ The Transportation Cabinet pays the Finance Cabinet rent for the kitchen, which is operated by the Kentucky Office for the Blind.⁴⁷ As previously stated, the Finance Cabinet uses a rate structure for leased agency space that includes a normalized statewide component for utility expenses.⁴⁸ CMTA states that the project will not alter the current use of this meter.⁴⁹

The Commission finds that the Finance Cabinet charges the Transportation Cabinet for natural gas supplied to and consumed by appliances in the Transportation Cabinet kitchen through the rent it collects from the Transportation Cabinet. Whether the piping downstream from the Mero Street meter is a master meter system turns on whether the line serving the Transportation Cabinet kitchen is “a pipeline system for distributing gas within a definable area” within the meaning of KRS 278.495(1).

The statute provides three examples of a piping system that distributes natural gas within a definable area: “a mobile home park, housing project, or apartment complex.” The Commission notes that each of these examples involves a piping system with multiple exterior lines serving multiple buildings. In contrast, the facilities downstream from the Mero Street meter consist of a single line serving a single building.

The Commission is not aware of any prior proceeding in which it has considered whether a single line serving a single building can constitute a jurisdictional master meter system with the meaning of KRS 278.495(1). The Commission takes note that PHMSA's

⁴⁶ Application, at 3.

⁴⁷ Response to Staff's First Request, Item 9.

⁴⁸ *Id.* at Item 10.

⁴⁹ *Id.* at Item 9.

Office of Pipeline Safety (OPS) has interpreted the federal definition of “master meter system” to apply only to gas distribution systems serving multiple buildings.⁵⁰ OPS has noted that:

Even though the present definition of 'master meter system' does not refer specifically to the existence of exterior piping serving multiple buildings, the reference to a 'pipeline system for distributing gas within . . . a mobile home park, housing project, or apartment complex' must involve the distribution of gas through exterior or underground pipelines to more than one building. The phrase regarding exterior piping serving multiple buildings was not considered essential since the use of exterior or underground pipelines to distribute gas to more than one building is implicit in the language of the definition.⁵¹

According to OPS, piping that serves a single building “do[es] not resemble the kinds of distribution systems to which Congress intended the Natural Gas Pipeline Safety Act to apply because of the absence of any significant amount of underground or external piping serving more than one building.”⁵²

The Commission notes, however, that in 2012 PHMSA issued an interpretation letter in which it concluded that piping systems that each served a single building are master meter systems subject to federal pipeline safety standards.⁵³ The property in question was a large apartment complex with approximately 20 buildings, each having

⁵⁰ See U.S. Dept. of Transportation for the Office of Pipeline Safety, "Assessment of the Need for an Improved Inspection Program for Master Meter Systems," A Report of the Secretary of Transportation to the Congress, prepared pursuant to Section 108 of Public Law 100-561 (Jan. 2002), at 5.

⁵¹ *Id.* at n.15 (quoting U.S. Dept. of Transportation, "Research and Special Programs Administration Responses to National Association of Pipeline Safety Representatives Resolutions" (RSPA Responses to NAPSRS Resolutions), at 115–116).

⁵² *Id.* at 6 (quoting RSPA Responses to NAPSRS Resolutions, at 116).

⁵³ PI-11-0014 (March 27, 2012).

five to seven residents, and a meter at each building through which the local distribution company provided natural gas service to the buildings. The apartment owner's piping downstream from each meter consisted of multiple lines, each of which served an individual residential unit. In total, there were approximately 12,293 feet of owner piping on the property. PHMSA stated without discussion that it "consider[s] the mains and service lines downstream from the LDC master meter (whether or not there are multiple buildings being served by a single meter) to be a distribution system that is subject to the Federal pipeline safety regulations."⁵⁴

In reconciling these interpretations, the Commission finds that the essential physical characteristic of a jurisdictional master meter system is the presence of multiple exterior pipelines downstream from a single meter. A distribution system with multiple external lines that serves multiple consumers poses a greater safety concern than does a single external line regardless of whether those consumers are in separate buildings or in separate units in a single building. The Commission finds that, at a minimum, a piping system downstream from a single meter must have multiple external lines to be considered a master meter system subject to the Commission's jurisdiction under KRS 278.495(2).

In this case, unlike the apartment complex piping systems addressed by PHMSA in PI-11-0014, the piping downstream from the Mero Street meter consists of a single, short segment of pipe that feeds directly into the Transportation Cabinet building. The Commission concludes that the single line downstream from the Mero Street meter that serves the kitchen in the Transportation Cabinet building is not "a pipeline system for

⁵⁴ *Id.* at 2.

distributing gas within a definable area” and thus is not a jurisdictional master meter system under KRS 278.495(1)(b).

CONCLUSION

Having reviewed the evidentiary record and being otherwise sufficiently advised, the Commission finds that based upon the information that CMTA provided concerning the proposed Project, with the amendment, the Finance Cabinet should not be designated as a utility pursuant to KRS 278.010(3), nor will the proposed Project, with the amendment, cause the Finance Cabinet to be considered a master meter system pursuant to KRS 278.495 and 49 C.F.R. Section 191.3.

IT IS THEREFORE ORDERED that:

1. CMTA’s request for an Order declaring that the provisions of KRS 278.010(3), KRS 278.495, and 49 C.F.R. Section 191.3 are inapplicable to the proposed Project, with the amendment, being performed by CMTA for the Finance Cabinet is granted.

2. Based upon the information provided, the proposed Project, with the amendment, shall not cause the Finance Cabinet to be deemed a utility as defined in KRS 278.010(3)(b).

3. Based upon the information provided, the proposed Project, with the amendment, shall not cause the Finance Cabinet to be considered a master meter system pursuant to KRS 278.495 and 49 C.F.R. Section 191.3.

4. CMTA’s Motion to Amend requesting to include the Kentucky History Center to the proposed Project is granted.

5. This case is hereby closed and will be removed from the Commission's docket.

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By the Commission

ENTERED
APR 19 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2018-00180

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